



RSA-1195-1989

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-1195-1989 (O&M)

Reserved on : 22.05.2024

Pronounced on : 07.06.2024

MAYA AND OTHERS

....Appellants

VERSUS

KALAWATI & ANOTHER

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. N.C. Kinra, Advocate for the appellants.

None for respondent No.1 despite service.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellants aggrieved by the judgment and decree dated 28.08.1987 passed by the Trial Court and the judgment and decree dated 12.01.1989 passed by the First Appellate Court.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellants filed a suit for declaration challenging the decree dated 22.07.1981 passed in favour of defendant-respondent No.1, namely, Kalawati. It was the case set up that the parties were related to each other and come from one common ancestor, namely, Arjun. It was averred that Shri Kishan - father of Maya, Pyari (plaintiff-appellants) and Smt. Kalawati (defendant-respondent No.1) and husband of Nangi (plaintiff No.3 in the original suit) was owner in possession of 2/3rd share of agricultural land



described in para No.2 of the plaint measuring 25K-11M and a pacca house situated in the Revenue Estate of Village Dadanpur. It was further the case set up that Shri Kishan had no male issue and was not on good terms with his nephews Kundan etc. at that time and the defendant-respondent No.2, who is the husband of defendant-respondent No.1, gave shelter to him and thereafter he remained under their influence. Due to the said fact the defendant-respondents obtained a collusive decree in a civil suit in their favour regarding the suit land which was illegal and not binding upon the rights of the plaintiff-appellants. It was further averred that the defendant-respondent No.1 tried to deprive the plaintiff-appellants of their right in the suit land by getting a mutation sanctioned on the basis of the decree and it was at that point that the plaintiff-appellants came to know about the same. It was further the case that no family partition or settlement had taken place between defendant-respondent No.1 and deceased, namely, Shri Kishan, and that he had handed over possession of the suit land and the house in question in favour of both the parties according to their respective shares. It was further the case that at the time of death of their father, the parties were in possession of the disputed property in equal shares and at the time of passing of the alleged decree the deceased was not in good health. It was further averred under these circumstances fraud had been committed upon the deceased. It was further the case set up that the deceased Shri Kishan had never come to Court to file the written statement admitting the claim in the suit and further that he had no right or power to alienate the disputed



property, which was ancestral, without any legal necessity and the consent of the family. Additionally, the plaintiff-appellants also set up a Will dated 18.10.1973 in their favour alleged to have been executed by Shri Kishan.

3. On notice, the suit was contested by the defendant-respondents. They pleaded that the suit was not maintainable. It was admitted that Shri Kishan died without leaving a male issue. It was further pleaded that Shri Kishan resided with the defendant-respondents as a member of the family and they used to render services to him. It was denied that any fraud was effected by the defendant-respondents at the time of passing of the decree and that the deceased was not in a good health to engage a counsel. It was further the case that Shri Kishan had appeared before the Court and made a statement. It was further denied that the deceased Shri Kishan had ever handed over possession of the suit land in favour of the plaintiff-appellants.

4. In replication the contents of the plaint were reiterated and those of the written statement were denied.

5. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the judgment and decree dated 22.07.1981 are illegal, void and not bidding on the rights of plaintiffs as alleged in para 6A to 6D of the plaint ? OPP
- 1A. Whether the deceased executed a valid will on 18.10.1983 in favour of plaintiff No.1 as alleged in the plaint ? OPP



2. Whether the suit is not maintainable in the present form ? OPD
3. Whether the plaintiffs have no locus standi to file the present suit ? OPD
4. Whether the defendant are entitled for special costs under Section 35-A CPC ? OPD
5. Relief.
6. On issue No.1 it was held that the deceased Shri Kishan had engaged a counsel and filed written statement admitting the entire claim of defendant-respondent No.1 herein, namely, Kalawati. It was also held that there was sufficient evidence on the file to hold that the deceased was residing with the defendant-respondents at the time of his death. On the question of Will i.e. issue No.1-A it was held that the plaintiff-appellants had failed to prove the Will in accordance with law. Accordingly, the suit was dismissed by the Trial Court vide judgment and decree dated 28.08.1987. Aggrieved by the same an appeal was filed by the plaintiff-appellants which appeal was dismissed by the First Appellate Court vide judgment and decree dated 12.01.1989. Hence, the present regular second appeal.
7. Defendant-respondent No.1 did not put in appearance despite service. Vide order dated 08.04.2023 the appeal qua defendant-respondent No.2 was dismissed as the learned counsel for the plaintiff-appellants had stated that that he did not wish to press the appeal qua defendant-respondent No.2.



8. Learned counsel for the plaintiff-appellants would contend that the suit property was ancestral and hence the plaintiff-appellants had a right by birth. It is further the contention of the learned counsel that an application being CM-1643-A-1989 has been filed along with the present appeal under Order 41 Rule 27 read with Section 151 CPC to produce additional evidence in the form of fard jamabandi for the year 1945-46 to prove that the land is ancestral and the fard jamabandi for the year 1960-61 which shows the khasra number after consolidation, the copy of the ration card issued in the name of Shri Kishan which shows that Kalawati never lived with Shri Kishan, another copy of the ration card which shows Nangi as head of the family and Maya Devi along with her children residing with her, voters list of 35-Jhajjar Vidhan Sabha Election Area showing that the plaintiff Nangi at Serial No.69, Maya Devi (plaintiff-appellant No.1) shown at serial No.70 residing in House No.29 and that the name of Kalawati is not there. Learned counsel would further contend that all the documents would prove that the suit property was ancestral in the hands of Shri Kishan and that he could not have given the property by way of a consent decree to the defendant-respondents.

9. Heard

10. In the present case the sole argument raised by the learned counsel for plaintiff-appellants is that the suit property is ancestral in nature. The case set up by the plaintiff-appellants before the Trial Court was that the consent decree was a result of fraud. The said fact was not proved and both



the Courts categorically held that there was no fraud which had been played and upheld that judgment and decree dated 22.07.1981 passed in Civil Suit No.503/81. The learned counsel for the plaintiff-appellants has not addressed any argument qua the said judgment and decree, however, the only argument raised is that the suit property is ancestral. Even the additional evidence has been led only to show that the suit property was ancestral in nature. The documents filed alongwith the application under Order 41 Rule 27 CPC have been considered.

11. Section 6(1) of the Hindu Succession Act, 1956 as substituted by Act 39 of 2005 (hereinafter referred to as the Act) reads as under :

‘Section 6 : Devolution of interest in co-parcenary property

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,

(a) by birth become a coparcener in her own right the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;



(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.'

12. The amendment to Section 6(1) of the Act was dealt with by the Hon'ble Supreme Court in the case of **Vineeta Sharma V/s Rakesh Sharma & Ors. [2020 (3) RCR Civil 473]**. Their Lordships held as under :

"55. The amended provisions of section 6(1) provide that on and from the commencement of the Amendment Act, the daughter is conferred the right. Section 6(1)(a) makes daughter by birth a coparcener "in her own right" and "in the same manner as the son." Section 6(1)(a) contains the concept of the unobstructed heritage of Mitakshara coparcenary, which is by virtue of birth. Section 6(1)(b) confers the same rights in the coparcenary property "as she would have had if she had been a son". The conferral of right is by birth, and the



rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth. Though the rights can be claimed, w.e.f. 9.9.2005, the provisions are of retroactive application; they confer benefits based on the antecedent event, and the Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener. At the same time, the legislature has provided savings by adding a proviso that any disposition or alienation, if there be any testamentary disposition of the property or partition which has taken place before 20.12.2004, the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated.

56. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backward and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or



requisites which had been drawn from antecedent events. Under the amended section 6, since the right is given by birth, that is an antecedent event, and the provisions operate concerning claiming rights on and from the date of Amendment Act.”

A reading of the above reproduced paragraphs in the case of **Vineeta Sharma** (supra) would clearly reveal that the provisions of Section 6 of the Act were held to be retroactive and that by virtue of the proviso any alienation made prior to 20.12.2004, i.e the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated.

13. In the case of **Sheela Devis V/s Lal Chand & Anr. [2006 (4) RCR (Civil) 912]** it has been held by the Apex Court as under :

“15. Although in 1927 Babu Ram had no son and the property at his hands became a separate property. But, in view of the well-settled principles of Hindu Law, as soon as a son was born to him the concept of the property being a coparcenary property in terms of Mitakshara School of Hindu Law revived. The law in this behalf has succinctly been stated in Mayne's Hindu Law & Usage, 14th edition, at pages 627-628 and 641, in the following terms:

“Where ancestral property has been divided between several joint owners, there can be no



doubt that if any of them have male issue living at the time of the partition, the share which falls to him will continue to be ancestral property in his hands, as regards his male issue, for their rights had already attached upon it, and the partition only cuts off the claims of the dividing members. The father and his male issue still remain joint. The same rule would apply even where the partition had been made before the birth of male issue or before a son is adopted, for the share which is taken at a partition, by one of the coparceners is taken by him as representing his branch. It was held by the Andhra Pradesh High Court that where a father divided the family property between him and his sons, the share obtained by him was his self-acquired property which he could bequeath to his wife.”

“Coparceners may hold property separately - An examination into the property of the joint family would not be complete without pointing out what property may be held by the individual members as their separate property. All property which is not held in coparcenary is separate property and



Hindu law recognizes separate property of individual members of a coparcenary as well as of separated members. (l) Property which comes to a man as obstructed heritage (Sapraati bandhadaya) is his separate property. It is not self-acquired property within the meaning of Hindu law, though in their incidents, there may be no difference between the two species...”

A perusal of the above reproduced paragraph in the case of **Sheela Devi** (supra) would clearly reveal that prior to the amendment of 2005 a male Hindu inheriting the property having no sons held the property as separate property. Admittedly, Shri Kishan had no son and hence the property in the hands of Shri Kishan was to be treated as a separate property. In the absence of a son, he had the power to treat the property as he wished.

14. The plaintiff-appellants herein have not been able to prove that there was any fraud played at the time of the passing of the judgment and decree dated 22.07.1981. In the absence of any fraud having being played, the power of Shri Kishan to alienate the suit property despite being ancestral property could not be challenged as the property in his hand would be treated as separate property in the absence of a son. Though post the amendment of 2005 to Section 6 of the Hindu Succession Act, daughters have been given an equal right and are treated as co-parcenary, however, in view of the proviso, as held in the case of **Vineeta Sharma** (supra), any



alienation made prior thereto cannot be invalidated as the provisions of Section 6 of the Act post the amendment of 2005 have been held to be retroactive. No other point has been urged or argued by the learned counsel for the plaintiff-appellants.

15. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merit, is accordingly dismissed. The application for additional evidence filed by the plaintiff-appellants is also dismissed. Pending applications, if any, also stand disposed off.

07.06.2024

Aman Jain

**(ALKA SARIN)
JUDGE**

*NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*